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by the ECF system

Hon. Denise L. Cote, U.S.D.J.  
Senator Patrick Moynihan Federal Courthouse  
500 Pearl Street, Courtroom 15B  
New York, New York 10007

Re: *Knopf v. Esposito*, 17 Civ. 5833 (DLC) (SN)

Your Honor:

This letter responds to the Court's query as to whether I was inconsistent or incorrect in stating that Sanford had declined to accept email service of a subpoena.

On October 29, I invited Sanford to accept service by email. *See* ECF 241-1. Mr. Sanford did not respond and, on November 10 (twelve days after my invitation), I filed the motion for leave to serve by email. I believe that the meaning of "decline" includes a failure to respond to an offer or invitation within a reasonable time. For example, the *Merriam-Webster Online Thesaurus* states, *verbatim*:

*Thesaurus*

**decline** verb

Synonyms & Antonyms of *decline*

(Entry 1 of 2)

**1** to show unwillingness to accept, do, engage in, or agree to

<https://www.merriam-webster.com/thesaurus/decline>

The *MacMillan Online Thesaurus* lists "ignore" and "pass up" as synonyms for decline. <https://www.macmillanthesaurus.com/us/decline> Contract law, of course, deems a failure to accept an offer within a reasonable time a rejection of the offer.

Regarding Mr. Sanford's contention that the subpoena was not prepared until November 3, 2020, what the "metadata" actually shows it that it was moved to another section of my computer to another after it was prepared. A copy of the subpoena was emailed to defendants on October 29.

Thank you for your attention to this matter.

Respectfully submitted,

/s/ Eric W. Berry

Eric W. Berry

cc: all parties by ECF, Ms. Nadel and Mr. Sanford by email